

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

Docket No. 2003-326-C

IN RE:	)	
	)	
Analysis of Continued Availability of Unbundled	)	
Local Switching for Mass Market Customers	)	Docket No. 2003-326-C
Pursuant to the Federal Communication	)	
Commission's Triennial Review Order	)	

**TALK AMERICA'S OBJECTIONS AND RESPONSES TO  
BELLSOUTH TELECOMMUNICATIONS, INC.'S  
FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

Talk America Inc. ("Talk"), pursuant to the Rules and Regulations of the Public Service Commission of South Carolina ("Commission") and pursuant to the Code of Laws of South Carolina, hereby generally and specifically objects to BellSouth Telecommunications, Inc.'s ("BellSouth") First Requests for Productions of Documents (Nos. 1-21). The objections stated herein are general and specific and are made at this time for the purpose of complying with the procedures as set forth in the CompSouth/BellSouth Joint Motion for Initial Procedural Order filed on November 12, 2003 for this proceeding. Any answer that Talk may provide in response to the BellSouth discovery will be provided subject to, and without waiver of, these objections. Talk reserves the right to amend, supplement, or revise these objections, and to assert additional objections should Talk discover additional grounds for objecting as Talk prepares its responses to any BellSouth discovery, or at any time prior to hearing.

**I.     General Objections**

Talk makes the following General Objections to BellSouth's First Requests for Production of Documents, including the applicable definitions and instructions therein

("BellSouth discovery"), which as appropriate, will be incorporated into each relevant response when such responses are served on BellSouth.

1. Talk objects to the BellSouth discovery to the extent that such discovery seeks to impose an obligation on Talk to respond on behalf of its subsidiaries and affiliates, or other persons that are not parties to this case on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules. Talk further objects to any and all BellSouth discovery that seeks to obtain information from Talk for Talk subsidiaries, affiliates, or other related Talk entities that are not certificated by the Commission. BellSouth's definitions of "you", "your" and "company" are examples of BellSouth's attempt to impose the above-referenced obligation on Talk.

2. Talk has interpreted the BellSouth discovery to apply to Talk's regulated intrastate operations in South Carolina and will limit its responses accordingly. To the extent that any BellSouth discovery is intended to apply to matters that take place outside the state of South Carolina and which are not related to Talk's South Carolina intrastate operations subject to the jurisdiction of the Commission, Talk objects to such request as irrelevant, overly broad, unduly burdensome, and oppressive.

3. Talk objects to the BellSouth discovery to the extent that such discovery calls for information which is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

4. Talk objects to the BellSouth discovery insofar as such discovery is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretations and are not properly defined or explained for purposes of these requests. Any responses

provided by Talk in response to BellSouth discovery will be provided subject to, and without waiver of, the foregoing objection.

5. Talk objects to the BellSouth discovery insofar as such discovery is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

6. Talk objects to the BellSouth discovery insofar as it seeks information or documents, or seeks to impose obligations on Talk which exceed the requirements of the Rules and Regulations of the Commission or South Carolina law.

7. Talk objects to providing information to the extent that such information is already in the public record before the Commission, the FCC, is otherwise publicly available, or which is already in the possession, custody, or control of BellSouth.

8. Talk objects to the BellSouth discovery to the extent that such discovery is overly broad, unduly burdensome, expensive, oppressive, or excessively time consuming as written.

9. Talk objects to each and every request to the extent that the information requested constitutes "trade secrets," confidential or proprietary information, which are privileged or exempt from public disclosure pursuant to applicable South Carolina law or rules of the Commission.

10. In the course of its business, Talk creates countless documents that are not subject to Commission or FCC retention of records requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document has been identified in response to these requests. Talk will conduct a reasonable and diligent search of those files

that are reasonably expected to contain the requested information. To the extent that the BellSouth discovery purports to require more, Talk objects on the grounds that compliance would impose an undue burden or expense.

11. Talk objects to the BellSouth discovery that seeks to obtain “all,” “each,” or “every” document, item, customer, or other such piece of information to the extent that such discovery is overly broad and unduly burdensome. Any answers that Talk may provide in response to the BellSouth discovery will be provided subject to, and without waiver of, this objection.

12. Talk objects to the BellSouth discovery to the extent such discovery seeks to have Talk create documents not in existence at the time of the request.

13. Talk objects to the BellSouth discovery as overly broad and unduly burdensome to the extent that such discovery is not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this docket.

14. In light of the short period of time Talk has been afforded to respond to the BellSouth discovery, the development of the Talk positions and potentially responsive information to the BellSouth requests is necessarily ongoing and continuing. This process is further complicated since at this point in time, the actual issues to be set forth for hearing in this docket have not yet been established by order of the Commission. Accordingly, these are preliminary objections to comply with the CompSouth/BellSouth Joint Motion for Initial Procedural Order and Talk reserves the right to supplement, revise, or modify its objections at the time that it serves its actual responses to the BellSouth discovery. However, Talk does not

assume an affirmative obligation to supplement answers on an ongoing basis, contrary to the BellSouth General Instruction.

15. Talk objects to BellSouth's First Requests for Production to Talk to the extent that the Requests purport to seek discovery of information and/or materials containing the mental impressions, conclusions, opinions or legal theories of any attorney or other representative of Talk concerning the subject of the proceeding and prepared and developed in anticipation of litigation pursuant to South Carolina law without the requisite showing from BellSouth that the denial of production or inspection will unfairly prejudice BellSouth in preparing its claim or defense or will cause BellSouth undue hardship or injustice.

16. Talk objects to the BellSouth discovery to the extent that the definitions operate to seek discovery of matters other than those subject to the jurisdiction of the Commission, pursuant to the FCC's Triennial Review Order, Commission regulations and South Carolina Law.

17. Talk objects to the BellSouth discovery to the extent that it asks for information that may not be available in precisely the same format, category, or definitions from Talk systems, which systems are limited in terms of their capacity to produce unlimited reports and information in any format, category or definition requested.

## **II. Specific Objections**

Talk makes the following Specific Objections to the BellSouth discovery, which as appropriate will be incorporated into each relevant response when Talk's responses are served on BellSouth.

18. Talk objects to each and every request for production that seeks information regarding Talk's operations in Incumbent Local Exchange Carrier (hereinafter "ILEC") service areas other than the BellSouth ILEC service area within the state of South Carolina as such information is irrelevant to BellSouth's case in this docket and such discovery is overly broad and unduly burdensome.

19. Talk objects to each and every request for production that seeks to obtain information regarding "former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Talk" as such information is not within Talk's control, would be unduly burdensome to attempt to obtain and is likely irrelevant.

20. To the extent that BellSouth's discovery requests specific financial, business or proprietary data regarding Talk's economic business model, Talk objects to providing any such information on the grounds that those requests presume the market entry analysis is contingent upon Talk's economic business model instead of a hypothetical business model contemplated by the Triennial Review Order and such information is confidential and proprietary to Talk.

21. Outside of the discovery request served by BellSouth, there have been discussions between BellSouth and some of the Competitive Local Exchange Carriers (hereinafter "CLECs") that this discovery is "regional" in nature and that BellSouth would prefer that the CLECs respond on a regional basis without additional service in these other states. At this point in time, without necessarily agreeing or disagreeing with BellSouth's request for regional answers, Talk reserves its rights to object to providing responsive information for states other than South Carolina. Further, in the event Talk does provide responsive information for states other than South Carolina pursuant to the discovery in this South Carolina docket, Talk reserves its rights to

not provide such non-South Carolina information in the South Carolina Commission docket. Finally, in the event Talk does provide information for states other than South Carolina pursuant to the discovery in this South Carolina Commission docket, Talk reserves its rights to provide such non-South Carolina information on a schedule other than that provided solely for this Commission docket.

22. Talk objects to the production of documents regarding any interrogatory to which Talk has objected.

### **III. Responses to Interrogatories Subject to Objections**

Talk incorporates its General Objections and Specific Objections herein. Subject to and without waiving those objections, Talk provides the following specific responses to BellSouth's requests.

#### **REQUEST NO. 1:**

Produce all documents identified in response to BellSouth's First Set of Interrogatories.

#### **OBJECTION:**

Talk objects to the extent the request seeks confidential, proprietary, or privileged documents. Talk also incorporates by reference any and all objections that Talk raised in response to BellSouth's First Set of Interrogatories.

#### **REQUEST NO. 2:**

Produce every business case in your possession, custody or control that evaluates, discusses, analyzes or otherwise refers or relates to the offering of a qualifying service in the State of South Carolina.

**OBJECTION:**

Talk objects on the grounds that the request seeks discovery of documents that are unrelated to the analysis the South Carolina Public Service Commission will conduct, irrelevant to the issues in the case, and not reasonably calculated to lead to the discovery of admissible evidence, inasmuch as the FCC ruled that the impairment analysis is not to be based on individual carriers' business models. Talk also objects on the grounds the request seeks the disclosure of confidential and proprietary business information.

**REQUEST NO. 3:**

Produce all documents referring or relating to the average monthly revenues you receive from end user customers in South Carolina to whom you only provide qualifying service.

**OBJECTION:**

Talk objects on the grounds that the request seeks discovery of information already in BellSouth's possession. Talk also objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for "all" documents is overbroad and unduly burdensome. Talk objects to the use of the terms "qualifying service" and "nonqualifying service" on the grounds the terms are subject to differing interpretations.

**REQUEST NO. 4:**

Produce all documents referring or relating to the average number of access lines you provide to end user customers in South Carolina to whom you only provide qualifying service.



**OBJECTION:**

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations.

**REQUEST NO. 5:**

Produce all documents referring or relating to the average monthly revenues you receive from end user customers in South Carolina to whom you only provide non-qualifying service.

**OBJECTION:**

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations.

**REQUEST NO. 6:**

Produce all documents referring or relating to the average monthly revenues you receive from end user customers in South Carolina to whom you provide both qualifying and non-qualifying service.

**OBJECTION:**

Talk objects on the grounds that it seeks discovery of information already in BellSouth’s possession. Talk also objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for “all” documents is

overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations.

**REQUEST NO. 7:**

Produce all documents referring or relating to the average number of access lines you provide to end user customers in South Carolina to whom you provide both qualifying and non-qualifying service.

**OBJECTION:**

Talk objects on the grounds the request for “all” documents is overbroad and unduly burdensome.

**REQUEST NO. 8:**

Provide all documents referring or relating to the classifications used by you to offer service to end user customers in South Carolina (e.g., residential customers, small business customers, mass market customers, enterprise customers, or whatever type of classification that you use to classify your customers).

**OBJECTION:**

Talk objects on the grounds the request seeks confidential, proprietary, or privileged documents. Talk also objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk incorporates by reference any and all objections that Talk raised in response to BellSouth’s First Set of Interrogatories.

**REQUEST NO. 9:**

Produce all documents referring or relating to the average acquisition cost for each class or type of end user customer served by you, as requested in BellSouth's First Set of Interrogatories, No. 34.

**OBJECTION:**

Talk objects to the extent the request seeks confidential, proprietary, or privileged documents. Talk also objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for "all" documents is overbroad and unduly burdensome. Talk incorporates by reference any and all objections that Talk raised in response to BellSouth's First Set of Interrogatories.

**REQUEST NO. 10:**

Produce all documents referring or relating to the typical churn for each class or type of end user customer served by you, as requested in BellSouth's First Set of Interrogatories, No. 35.

**OBJECTION:**

Talk incorporates its objection to Interrogatory No. 35.

**REQUEST NO. 11:**

Produce all documents referring or relating to how you determine whether to serve an individual customer's location with multiple DS0s or with a DS1 or larger transmission system.

**RESPONSE:**

Talk incorporates its General Objections and Specific Objections herein. Notwithstanding the foregoing, Talk has no documents responsive to this request.

**REQUEST NO. 12:**

Produce all documents referring or relating to the typical or average number of DS0s at which you would choose to serve a particular customer with a DS1 or larger transmission system as opposed to multiple DS0, all other things being equal.

**RESPONSE:**

Talk incorporates its General Objections and Specific Objections herein. Notwithstanding the foregoing, Talk has no documents responsive to this request.

**REQUEST NO. 13:**

Produce all documents referring or relating to the cost of capital used by you in evaluating whether to offer a qualifying service in a particular geographic market.

**OBJECTION:**

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations. Talk objects to the use of the term “cost of capital” on the grounds the term is subject to differing interpretations.

**REQUEST NO. 14:**

Produce all documents referring or relating to the time period used by you in evaluating whether to offering a qualifying service in a particular geographic market (e.g., one year, five years, ten years or some other time horizon over which a project is evaluated)?

**OBJECTION:**

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk also objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations. Talk objects to the use of the term “geographic market” on the grounds the term is subject to differing interpretations.

**REQUEST NO. 15:**

Produce all documents referring or relating to your estimates of sales expense when evaluating whether to offer a qualifying service in a particular geographic market.

**OBJECTION:**

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk also objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations. Talk objects to the use of the term “sales expense” on the grounds the term is subject to differing interpretations.

**REQUEST NO. 16:**

Produce all documents referring or relating to your estimates of general and administrative (G&A) expenses when evaluating whether to offer a qualifying service in a particular geographic market.

**OBJECTION:**

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk also objects on the grounds the request for "all" documents is overbroad and unduly burdensome. Talk objects to the use of the terms "qualifying service" and "nonqualifying service" on the grounds the terms are subject to differing interpretations. Talk objects to the use of the term "general and administrative (G&A) expenses" on the grounds the term is subject to differing interpretations.

**REQUEST NO. 17:**

Produce all documents referring or relating to any complaints by you or its end user customers about individual hot cuts performed by BellSouth since January 1, 2000.

**RESPONSE:**

Talk incorporates its General Objections and Specific Objections herein. Notwithstanding the foregoing, Talk has no documents responsive to this request.

**REQUEST NO. 18:**

Produce all documents referring or relating to a batch hot cut process used by any ILEC in the BellSouth region that is acceptable to you or that you believe is superior to BellSouth's batch hot cut process.

**RESPONSE:**

Talk incorporates its General Objections and Specific Objections herein. Notwithstanding the foregoing, Talk has no documents responsive to this request.

**REQUEST NO. 19:**

Produce all documents referring or relating to an individual hot cut process used by any ILEC in the BellSouth region that is acceptable to you or that you believe is superior to BellSouth's individual hot cut process.

**RESPONSE:**

Talk incorporates its General Objections and Specific Objections herein. Notwithstanding the foregoing, Talk has no documents responsive to this request.

**REQUEST NO. 20:**

Produce all documents referring or relating to a batch hot cut process used by any ILEC outside the BellSouth region that is acceptable to you or that you believe is superior to BellSouth's batch hot cut process.

**RESPONSE:**

Talk incorporates its General Objections and Specific Objections herein. Notwithstanding the foregoing, Talk has no documents responsive to this request.

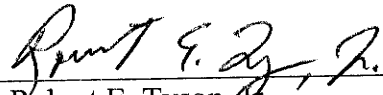
**REQUEST NO. 21:**

Produce all documents referring or relating to an individual hot cut process used by any ILEC outside the BellSouth region that is acceptable to you or that you believe is superior to BellSouth's individual hot cut process.

**RESPONSE:**

Talk incorporates its General Objections and Specific Objections herein. Notwithstanding the foregoing, Talk has no documents responsive to this request.

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December 2, 2003



**CERTIFICATE OF SERVICE**

I, the undersigned paralegal of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Talk America, do hereby certify that I have served a copy of the pleading(s) hereinbelow specified via e-mail to the following address(es):

**Pleadings:** **Talk America's Objections to BellSouth's First Request for Production of Documents**

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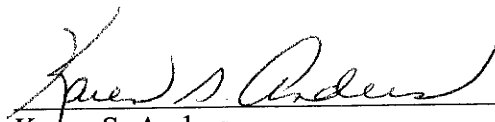
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December 2, 2003